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Counsel to Jubilee-Springdale, LLC

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION**

In re:

CIRCUIT CITY STORES, INC., *et al.*,

Debtors.

Case No. 08-35653-KRH
Chapter 11
Jointly Administered

**RESPONSE AND OPPOSITION OF JUBILEE-SPRINGDALE, LLC
TO LIQUIDATING TRUST'S FORTY-FIRST OMNIBUS
OBJECTION TO LANDLORD CLAIMS
(REDUCTION OF CERTAIN INVALID CLAIMS-MITIGATION)**

Jubilee-Springdale, LLC ("Jubilee"), by counsel, having filed a proof of claim identified and included in the above captioned *Liquidating Trust's Forty-First Omnibus Objection to Landlord Claims* (Reduction of Certain Invalid Claims-Mitigation) (the "Objection") filed by Alfred H. Siegel (the "Trustee"), the duly appointed trustee of the Circuit City Stores, Inc., Liquidating Trust (the "Trust"), does hereby oppose the Objection and for its response, states as follow:

1. Circuit City Stores, Inc. and certain of its affiliated entities (collectively, "Debtors") filed a petition for relief on or about November 10, 2008 ("Petition Date"). After the Petition Date, the Debtors continued to be in possession and operation of their businesses.

2. Pursuant to that *Notice of Rejection of Unexpired Leases and Abandonment of Personal Property* [Docket No. 2408], the Debtors rejected that certain Lease dated March 7, 2011, by and between Jubilee and the Debtor (the “Lease”) for the premises located at 493 East Kemper Avenue, Cincinnati, Ohio 45246 (the “Premises”). The Lease was rejected effective March 10, 2009.

3. On or about May 1, 2009, Jubilee filed a proof of claim number 12771 (the “Claim”), amending claim number 9248 and setting forth a general unsecured claim in the amount of \$759,541.86, representing prepetition sums due under the Lease in the amount of \$51,177.06, as well as rejection damages in the amount of \$708,364.80 (the “Rejection Damages”). The Rejection Damages were calculated as 15% of the remaining term of the Lease, or 1.2 years, pursuant to 11 U.S.C § 502(b)(6). A copy of the Claim is attached as **Exhibit A**.

4. The Objection seeks to disallow the Claim in part on the basis that Jubilee may or may not have engaged in sufficient efforts to mitigate its Rejection Damages. Specifically, the Objection seeks to reduce the Claim from \$759,541.86 to \$51,177.06.

5. The apparent premise for the reduction is the avoidance of all damages incurred by Jubilee under 11 U.S.C. § 502(b)(6) or all the Rejection Damages incurred under the Lease.

6. Jubilee did engage in substantial mitigation efforts, including the engagement of a broker to market and rent the Premises. Despite such efforts, Jubilee was unable to locate a suitable tenant for the Premises prior to October 21, 2010.

7. Given that the replacement tenant rented the Premises after the 1.2 years which comprise the Rejection Damages period, Jubilee remains entitled to the full amount of Rejection Damages set forth in the Claim.

8. For additional information regarding the mitigation efforts of Jubilee, the Liquidating Trustee may contact:

Richard Wolney
Schottenstein Property Group
c/o Jeremy S. Williams, Esq.
Kutak Rock LLP
1111 East Main Street, Suite 800
Richmond, Virginia 23219

Additional contact information for Jubilee is available upon request.

9. Based on the above, the Objection should be denied.

WHEREFORE, Jubilee respectfully request that this Court deny the relief requested in the Objection as it relates to the Claim; deem the Claim allowed; and grant such other and further relief as is just and proper.

Dated: June 26, 2012
Richmond, Virginia

Respectfully submitted,

/s/ Jeremy S. Williams

KUTAK ROCK LLP

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Counsel to Jubilee-Springdale, LLC

CERTIFICATE OF SERVICE

I hereby certify under penalty of perjury that on June 26, 2012, a true and exact copy of the foregoing was served via ECF notification to the following:

Jeffrey N. Pomerantz, Esq.
Andrew W. Caine, Esq.
Pachulski Stang Ziehl & Jones LLP
10100 Santa Monica Boulevard
Los Angeles, CA 90067-4100

Lynn L. Tavenner, Esq.
Paula S. Beran, Esq.
Tavenner & Beran, PLC
20 North Eighth Street, 2nd Floor
Richmond, VA 23219

/s/ Jeremy S. Williams
Counsel

B 10 Official Form 10 (12/07)

UNITED STATES BANKRUPTCY COURT FOR THE EASTERN DISTRICT OF VIRGINIA

PROOF OF CLAIM

Debtor against which claim is asserted (Check only one box below)

- ☒ Circuit City Stores, Inc. (Case No. 08-35653) ☐ CC Distribution Company of Virginia, Inc. (Case No. 08-35659) ☐ Abbott Advertising, Inc. (Case No. 08-35665)
- ☐ Circuit City Stores West Coast, Inc. (Case No. 08-35654) ☐ Circuit City Stores PR, LLC (Case No. 08-35660) ☐ Mayland MN, LLC (Case No. 08-35666)
- ☐ InterTAN, Inc. (Case No. 08-35655) ☐ Circuit City Properties, LLC (Case No. 08-35661) ☐ Patapsco Designs, Inc. (Case No. 08-35667)
- ☐ Ventoux International, Inc. (Case No. 08-35656) ☐ Orbyx Electronics, LLC (Case No. 08-35662) ☐ Sky Venture Corporation (Case No. 08-35668)
- ☐ Circuit City Purchasing Company, LLC (Case No. 08-35657) ☐ Kinzer Technology, LLC (Case No. 08-35663) ☐ XSSuff, LLC (Case No. 08-35669)
- ☐ CCAviation, LLC (Case No. 08-35658) ☐ Courchevel, LLC (Case No. 08-35684) ☐ PRAHS, INC. (Case No. 08-35670)

NOTE: This form should not be used to make a claim for administrative expenses arising after the commencement of the case. A request may be filed pursuant to 11 U.S.C. § 503(a).

Name of Creditor (the person or other entity to whom the debtor owes money or property):
JUBILEE-SPRINGDALE, LLC

☒ Check this box to indicate that this claim amends a previously filed claim

Name and address where notices should be sent:

NameID: 4531535

PackID: 21817

Court Claim Number: 9248

JUBILEE-SPRINGDALE, LLC

Attention: KIMBERLY A. PIERRO, ESQ.
KUTAK ROCK LLP
1111 E. MAIN STREET, STE 800
RICHMOND, VA 23219

(if known)

Filed on: 1/30/09

Telephone number: (614) 449-4831

Name and address where payment should be sent (if different from above):

Telephone number:

1. Amount of Claim as of Date Case Filed: **\$ 759,541.86**

If all or part of your claim is secured, complete item 4 below; however, if all of your claim is unsecured, do not complete item 4.

If all or part of your claim is entitled to priority, complete item 5.

☐ Check this box if claim includes interest or other charges in addition to the principal amount of claim. Attach itemized statement of interest or charges.

2. Basis for Claim: **pre-petition rent and 502(b)(6)**
(See instruction 12 on reverse side)

3. Last four digits of any number by which creditor identifies debtor: _____

3a. Debtor may have scheduled account as: _____
(See instruction #3a on reverse side.)

4. Secured Claim (See instruction 114 on reverse side)

Check the appropriate box if your claim is secured by a lien on property or a right of setoff and provide the requested information.

Nature of property or right of setoff: ☐ Real Estate ☐ Motor Vehicle ☐ Other
Describe: _____

Value of Property \$ _____ Annual Interest Rate _____ %

Amount of arrearage and other charges as of time case filed included in secured claim, if any \$ _____ Basis for perfection: _____

Amount of Secured Claim \$ _____ Amount Unsecured \$ _____

6. Credits The amount of all payments on this claim has been credited for the purpose of making this proof of claim.

7. Documents: Attach redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements or running accounts, contracts, judgments, mortgages, and security agreements. You may also attach a summary. Attach redacted copies of documents providing evidence of perfection of a security interest. You may also attach a summary. (See definition of "redacted" on reverse side.)

DO NOT SEND ORIGINAL DOCUMENTS. ATTACHED DOCUMENTS MAY BE DESTROYED AFTER SCANNING.
If the documents are not available, please explain:

Signature: the person filing this claim must sign it. Sign and print name and title, if any, of the creditor or other person authorized to file this claim and state address and telephone number if different from the notice address above. Attach copy of power of attorney, if any.

FOR COURT USE ONLY

Date:

4/30/09

Kimberly A. Pierro, Counsel for Jubilee-Springdale, LLC

Penalty for presenting fraudulent claim: Fine of up to \$500,000 or imprisonment for up to 5 years, or both 18 U.S.C. § 157

*Amounts are subject to adjustment on 4/1/10 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment.

Amount entitled to priority: \$ _____

☐ Other - Specify applicable paragraph of 11 U.S.C. § 507(a)(____).

☐ Taxes or penalties owed to governmental units — 11 U.S.C. § 507(a)(8)

☐ Up to \$2,425* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use — 11 U.S.C. § 507(0)(7)

☐ whichever is earlier — 11 U.S.C. § 507(a)(4).

☐ Contributions to an employee benefit plan — 11 U.S.C. § 507(a)(5).

☐ Domestic support obligations under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B). Wages, salaries, or commissions (up to \$10,950*) earned within 180 days before filing of the bankruptcy petition or cessation of the debtors business.

Specify the priority of the claim.

5. Amount of Claim Entitled to Priority under 11 U.S.C. § 507(a). If any portion of your claim falls in one of the following categories, check the box and state the amount.

☐ Check this box if you are aware that anyone else has filed a proof of claim relating to your claim. Attach copy of statement giving particulars.

☐ Check this box if you are the debtor or trustee in this case.

EXHIBIT

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In re Circuit City Stores, Inc.

Proof of Claim #9248 as Amended

Pre-petition rent:	\$ 51,177.06
Damages pursuant to 11 U.S.C § 502(b)(6):	
15% of remaining term of lease: 1.2 years	<u>\$ 708,364.80</u>
Total:	\$ 759,541.86